IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 27799 of 2005(H)

OS.156/2001 of MUNSIFF COURT, ALATHUR
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PETITIONER:

SAROJINI, D/O. RAMAKRISHNAN,
KALAYAM PARAMBIL, IRIMAYOOR P.O.,
IRIMAYOOR AMSOM, ALATHUR TALUK.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENT:

CHENTHAMARA, S/O. KOYU,
MUTTICHIRAYIL, KUNISSERY P.O., KUNISSERY AMSOM,
DESOM, ALATHUR TALUK.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P
SRI.M.V.BIPIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE DECREE DT.21.06.02 IN OS NO.156 OF 2001 OF THE MUNSIFF COURT, ALATHUR.

EXT.P2 : TRUE COPY OF THE COMPROMISE PETITION DT.21.06.02 IN OS NO.156 OF 2001 OF THE MUNSIFF'S COURT, ALATHUR.

EXT.P3 : TRUE COPY OF THE SALE DEED DT.21.06.03 BY THE MUNSIFF COURT.

EXT.P4 : TRUE COPY OF THE COMPROMISE AGREEMENT DT.04.08.2004.

EXT.P5 : TRUE COPY OF THE PROCEEDINGS SHEET IN IA NO.1327 OF 2004 IN OS NO.156 OF 2001 OF THE MUNSIFF COURT, ALATHUR.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 27799 OF 2005

Dated this the 6th day of June, 2007

JUDGMENT

A decree for specific performance of a contract for sale of property was passed against the petitioner and in execution of that decree a document of conveyance was executed by the court in his favour. But when respondent levied execution of that decree there were some negotiations between the parties who arrived at Ext.P4 agreement. On the terms of Ext.P4 the respondent agreed that the property will be re-conveyed to the petitioner on payment of Rs.1,15,000/-. The petitioner had readily paid Rs.80,000/- on the date of Ext.P4 itself. For payment of balance amount of Rs.35,000/- time till 20.09.04 was provided in the agreement. The petitioner did not pay the balance amount within the stipulated time. It is the term of Ext.P4 that if the balance amount is not paid within the stipulated time, Ext.P4 will lapse and that the respondent can get delivery of the property taken through the court and under such an event the respondents will be liable to refund only Rs.60,000/- out of the amount paid under Ext.P4. Complaining that the balance amount was not paid in the stipulated time and seeking delivery of the property, the petitioner filed IA No.1327 of 2004. The court below received counter affidavit from the petitioner in

that IA and while the IA stood posted for enquiry, once again there was a move for settlement and the court below adjourned the IA for settlement on several dates. Finally time for settlement was extended till 02.09.05 and on that day the court below has passed the impugned order directing delivery, noticing that settlement has not materialsed.

2. Heard Sri.P.Vijaya Bhanu, learned counsel for the petitioner and Sri.Sajan Varghese, counsel for the respondent.

3. Fervant submissions were made by counsel on both sides. I do not find any infirmity about the impugned order warranting correction in this court's visitorial jurisdiction under Article 227. But it is seen that this court on admitting the writ petition became inclined to grant stay on condition that the petitioner shall pay an amount of Rs.10,000/-. When that amount was tendered to the decree holder, they were not ready to accept the amount and hence amount was deposited by the petitioner before the court.

Having regard to the facts and circumstances which attend on this case, I feel that considerations of indulgence and compassion require that the petitioner be given another chance to avert the difficult situation of being dispossessed from the properties which are said to be her residential aboard. But the interest of the respondent also cannot be lost sight of. The balance amount of Rs.35,000/- was payable up to

02.09.2005. Even at a reasonable rate of roughly 12% the amount should generate interest of Rs.11,000/- as on 15.07.2007. Even as I refuse to set aside the impugned order, I direct that the order of stay presently passed will become absolute if the petitioner pays a sum of Rs.36,000/- to the respondent on or before 15.07.07. If that amount is tendered to the respondent before that date, the same will be received by the respondent in full settlement of his monetary claims under Ext.P4. The respondents will also be entitled to withdraw the sum of Rs.10,000/- deposited by the petitioner before the court. If the amount is not paid as above, the stay will stand vacated and the impugned order will become operative. If amount is paid as above the respondent will execute a re-conveyance deed, cost of which will be born by the petitioners themselves.

PIUS C. KURIAKOSE, JUDGE

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